IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 749 of 1999()

CRA.165/1997 of ADDL.SESSIONS COURT-II, KOZHIKODE
CC.91/1995 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY

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REVN. PETITIONER: APPELLANT/ACCUSED

KATTUNILATHIL THANKAN ALIAS THOMAS
S/O.JOSEPH, OORNGATTIRI AMSOM.

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   SUB INSPECTOR OF POLICE, THIRUVAMBADI.

2. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.749/99

ORDER ON CRL.M.P.NO.3343/1999 IN CRL.R.P.NO.749/99

DISMISSED

16.8.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.749 of 1999

Dated this the 16th day of August, 2007

O R D E R

The revision petitioner is the first accused in C.C.No.91/95 who stands convicted for the offence under Section 353 IPC and sentenced to undergo R.I. for one year. The accused 1 to 8 stood charged sheeted for the offence under Sections 143, 147, 148, 341, 506(II) read with Section 149 IPC.

2. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 12, Exts. P1 to P6.

3. The trial court convicted the first accused for the offence under Section 353 IPC. The rest of the accused were acquitted. The prosecution case is that the Forest officials that included PWs' 1 and 2 while doing patrol duty on 11.5.1994 at about 2.00 p.m. and when they reached a place called Cheenkannipali, took into custody a lorry load carrying the wooden logs which was illicitly removed from the forest and while the wooden logs on the lorry was bringing to the forest office they were stopped by the accused who came in a jeep and PW1, Forest

guard who was sitting in the cabin of the lorry was pushed down from inside the lorry and A1 threatened that he will kill him and the other accused untied the rope and the wooden logs fell down on the road. PWs' 1 and 2, the Forest guard and the Forest ranger have testified as to the incident. The other witnesses cited in support of the prosecution version turned hostile. PW11 is the investigating officer. The courts below have concurrently found that the accused is guilty of the offence as the evidence of PWs' 1 and 2 appeared credible. The counsel for the revision petitioner has contended that no objective evidence has been adduced to establish that PWs' 1 and 2 were public servants and further that even if so, there is no evidence to show that PWs' 1 and 2 were obstructed in discharging their duties as public servants.

4. I find that the version of PWs' 1 and 2 and that of the investigating officer as to the official status of PWs' 1 and 2 stands not challenged. It is sufficient to establish the fact that PWs' 1 and 2 are public servants. In support of the second contention the counsel has relied on the decision reported in **Devaki Amma vs. State of Kerala (1981 KLT 475)** and

Mohammed Kutty vs. State of Kerala (2004 (1) KLT 331). I find that both the decisions are based on different facts situations and that in the above matters there is no evidence as to the use of criminal force and in the first cited decision there was no evidence as to the use of criminal force as the allegation is that the gate of the house in which the petitioner sisters are residing was closed when the Taluk Surveyor and the Revenue Inspector came to the compound for conducting survey. In the second case, the complainant was proceeding to his office and when he reached near the check post, the accused caught hold of his uniform and insulted him. Evidently in the first cited case, there is no use of criminal force and in the latter case the defacto complainant was not executing the official duty at the time. In the instant case, the situation is that PW1 was in course of executing his official duties and in tact in the midst of the same. The above decisions set up by the counsel has no relevance to the instant case. In the circumstances, the concurrent findings of the court below are confirmed.

5. Counsel for the revision petitioner has pleaded for

leniency pointing out that more than 10 years have elapsed since the commencement of the proceedings and that accused was facing the ordeal of criminal proceedings so far. The incident is dated 11.5.1994. It is also pointed out that the offence under Section 353 imprisonment is not mandatory. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay fine of Rs.5,000/- and in default, to undergo simple imprisonment for two months. The revision petitioner shall appear before the Judicial First Class Magistrate Court-II, Thamarassery on 18.9.2007 to receive the sentence.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl

K.R.UDAYABHANU, J

Crl.A.No.350/2001

JUDGMENT

25th July 2007